

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL MEMORANDUM**

**HB 109 – SB 1134**

March 28, 2017

**SUMMARY OF ORIGINAL BILL:** Increases the amount of marijuana that one can possess or casually exchange from one-half ounce to one ounce.

Increases from one-half ounce to one ounce, the minimum amount of marijuana for which someone can be prosecuted for manufacturing, delivering, selling, or possessing with intent.

Prohibits a jury from inferring that someone possessing or casually exchanging marijuana in an amount less than one ounce was possessing or exchanging for the purpose of selling or distributing.

**FISCAL IMPACT OF ORIGINAL BILL:**

Decrease State Expenditures – \$793,300/Incarceration\*

**SUMMARY OF AMENDMENT (006239):** Deletes all language after the enacting clause. Reclassifies the possession or selling of marijuana under one ounce as a class A misdemeanor rather than a class E felony. Defines “casual exchange” as the spontaneous passing of a small amount of marijuana that does not involve the payment of money, or a gift card, debit card, credit card, or any other card, coupon, or token that is capable of being exchanged for money, merchandise, or goods. Defines “marijuana” as marijuana in the form of a plant. Prohibits a jury from inferring that someone possessing or casually exchanging marijuana in an amount less than one ounce was possessing or exchanging for the purpose of selling or distributing.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- The proposed legislation will decrease admissions for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and one ounce.
- Under current law, one commits a Class E felony for possessing with intent to sell marijuana in an amount between one-half ounce and 10 pounds. The proposed legislation would allow possession with intent of marijuana in an amount between one-

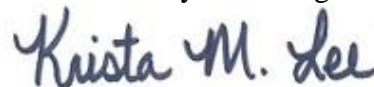
half ounce and one ounce. The proposed legislation will result in fewer Class E felony admissions for possession with intent for amounts of marijuana between one-half ounce and one ounce.

- Statistics from the Department of Correction (DOC) show a 10-year average of 267 admissions per year for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and one ounce.
- It is assumed that most offenders actually being imprisoned for possession with intent to sell or selling marijuana possessed a substantial amount of marijuana, which likely exceeded one ounce. It is assumed that the proposed legislation will reduce these admissions by 10 percent ( $267 \text{ admissions} \times 0.1 = 27 \text{ admissions}$ ).
- Data from the DOC shows the average time served for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and ten pounds is 1.17 years (427.34 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2017 is \$68.75.
- The proposed legislation will decrease state incarceration costs by \$793,250 ( $27 \text{ admissions} \times 427.34 \text{ days} \times \$68.75$ ).
- Statistics from the DOC show an average of 0.1 admissions each year for casually exchanging a controlled substance with a minor. It is assumed that most of the admissions are related to Tenn. Code Ann. § 39-17-418(a) (casual exchange of a controlled substance) and not Tenn. Code Ann. § 39-17-418(b) (marijuana under one-half ounce). Repealing the offense of distributing less than one-half ounce of marijuana to a minor will not significantly decrease state expenditures.
- The proposed legislation will result in 27 fewer felony cases each year. That is less than one case per judicial district. The proposed legislation will not reduce the courts', district attorneys', or public defenders' caseloads enough to require a reduction in workforce.
- The proposed legislation makes possession of an amount of marijuana between one-half ounce and one ounce a class A misdemeanor.
- It is assumed that the average possession charge is punished with just a fine and not time in a local jail. It is assumed that increasing from one-half ounce to one ounce the amount of marijuana one can possess will not significantly impact local incarceration costs.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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